

### **REMARKS**

Applicant hereby adds new claims 101-107. Accordingly, claims 50-52, 54-69, 71-107 are pending in the present application.

Claims 50-51, 54-56, 58-59, 61, 65-68, 71-73, 75-76, 78, and 82 stand rejected under 35 U.S.C. 102(b) for anticipation by U.S. Patent No. 4,782,342 to Walton. Claims 65-66 stand rejected under 35 U.S.C. 103(a) for obviousness over Walton. Claims 84, 88, 92, 94, and 96 stand rejected under 35 U.S.C. 103(a) for obviousness over Walton in view of U.S. Patent No. 5,801,466 to Odagiri. Claims 52, 57, 60, 62-64, 69, 74, 77, and 79-81 stand rejected under 35 U.S.C. 103(a) for obviousness over Walton in view of U.S. Patent No. 5,493,437 to Lebby et al. Claims 89 and 97 stand rejected under 35 U.S.C. 103(a) for obviousness over Walton in view Lebby et al. as applied to claim 79 above and further in view of U.S. Patent No. 5,649,296 to MacLellan et al. Claims 83,85, 87, 91, 93, 95, and 99-100 stand rejected under 35 U.S.C. 103(a) for obviousness over Walton in view of MacLellan.

Applicant respectfully traverses the rejections and urges allowance of the present application.

Applicant again reasserts arguments presented in previous Office Action responses and asserts the claims are allowable for at least the reasons presented therein. Applicant presents the following remarks to further illustrate patentable subject matter of the present application and to address continuing deficiencies of this and previous Office Actions and to further distinguish at least some aspects of the invention.

Referring to the rejection of claim 50, the Examiner relies upon the teachings of Walton as allegedly anticipating the claimed limitations. The Examiner relies upon the identifier circuit 212 as allegedly disclosing the claimed communication circuitry as set forth in page 2 of the Action. It is clear from the Walton teachings that a magnetic coupled system is implemented for communications wherein circuit 212 modulates the magnetic field for communications. Further, it is clear from col. 7 of Walton that a communication frequency of 13.56 MHz is used. Walton is also clearly directed towards to avoiding the problem of standing waves at higher frequencies as set forth in cols. 3-4.

Walton is directed towards a magnetic coupled system which is not configured for communicating microwave signals having a frequency in excess of about 900 MHz as recited in claim 50. Applicants submit herewith a passage from the "RFID Handbook" by Klaus Finkenzeller, copyright 1999 (John Wiley & Sons Ltd) pages 20-22 explaining the differences between an inductive (magnetic) coupled system of Walton set forth in section 2.3.2 and microwave systems as described in section 2.3.3. Walton is directed towards an entirely unrelated magnetically coupled system and fails to disclose or suggest the communication of wireless signals comprising microwave signals as claimed. Limitations of claim 50 are not shown nor suggested by the prior art and claim 50 is allowable for at least this reason.

The claims which depend from independent claim 50 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

For example, referring to claim 84, the Examiner relies upon the battery teachings of Odagiri. It is stated on page 8 of the Action that the combination is appropriate apparently for the purpose of providing an additional power supply. The rejection and reasoning is nonsensical. Walton is directed towards a passive system to derive energy from the received magnetic flux. There is no suggestion for an additional power supply except by improperly relying upon Applicant's disclosure. The Examiner fails to point to any teachings in the art that one of skill in the art concerned with a passive system would look to combine a battery for "providing additional power supply" as alleged in the Action. Further, the Examiner recites teachings regarding "the power source enough to run motor within wireless environment." Applicant submits the teachings regarding a power source enough to "run motor within wireless environment" fail to provide any motivation to combine the reference teachings. Claim 84 recites the battery is coupled with the communication circuitry. Walton is a passive system deriving power for communications from the received flux and there is no teaching or suggestion to combine the battery teachings. The Examiner has improperly relied upon Applicant's disclosure to reject claim 84 and claim 84 is allowable for this additional reason.

Referring to independent claim 54, the Examiner relies upon the teachings of Walton in support of the anticipation rejection. Applicant appreciates the supplemented explanation of the rejection of claim 54 as set forth on page 2 of the Office Action. However, the Examiner fails to identify teachings of Walton which allegedly disclose limitations of Applicant's claim 54. In particular, claim 54 recites a substrate having a

*support surface* and an encapsulant. The Examiner baldly relies upon the teachings of col. 6, lines 1-53 as teaching the substrate and encapsulant with no identification of the Walton teachings relied upon as disclosing the substrate and those relied upon as disclosing the encapsulant. In col. 6, lines 44-53 it is stated that the assembly is encapsulated in a plastic rectangular bar 610. The plastic rectangular bar fails to disclose or suggest the claimed substrate having the support surface and the encapsulant as claimed. Limitations of claim 54 are not shown nor suggested by the prior art and claim 54 is allowable.

The claims which depend from independent claim 54 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

For example, new claim 103 recites the substrate and the encapsulant comprise different materials. The plastic bar of Walton fails to disclose or suggest the substrate and the encapsulant comprising different materials and claim 103 is allowable.

Claim 59 recites the communication circuitry configured to communicate wireless signals comprising microwave signals. The magnetically coupled system of Walton fails to disclose or suggest the microwave communications of claim 59 and claim 59 is allowable for at least this reason.

The claims which depend from independent claim 59 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

Claim 62 recites the communication circuitry configured to communicate wireless signals comprising microwave signals. The magnetically coupled system of Walton fails to disclose or suggest the microwave communications of claim 62 and claim 62 is allowable for at least this reason.

The claims which depend from independent claim 62 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

Claim 65 stands rejected for anticipation over Walton. The rejection is in error. For example, on page 6 of the Action, it is stated that subject matters in claim 65 are disclosed in claims 59 and 61, and therefore, rejections of subject matters expressed in claim 65 are met by references and associated arguments applied to rejections of claims 59, 61. Initially, Applicant disagrees with the position that subject matters in claim 65 are disclosed in claim 59, 61. The PTO and Federal Circuit provide that §102 anticipation requires that *each and every element* of the claimed invention be disclosed in **a single prior art reference**. *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990). Any alleged "disclosure" of claims 59 and 61 is **irrelevant** to a 102 inquiry of claim 65. Instead, and in accordance with the C.F.R., the Office Action is required to identify teachings in the prior art reference which allegedly disclose limitations of claim 65. None are provided in the Office Action. Further, claims 59 and 61 fail to recite positively recited limitations of claim 65 and any analysis of claims 59 and 61 is irrelevant to claim 65. Claim 65 recites a power source. Contrary to the C.F.R., the rejection of claim 65 in the Office Action fails to identify

any **teachings in the art** which allegedly disclose the power source limitations of claim 65.

Walton fails to disclose or suggest limitations of claim 65 and claim 65 is not anticipated by Walton for at least this reason.

Claim 65 further recites communication of wireless signals comprising microwave signals. Walton is devoid of any microwave teachings and claim 65 is allowable for at least this additional reason.

Further, Lebby also fails to disclose or suggest the microwave limitations of claim 65, and accordingly, even if Lebby is combined with Walton in a proper 103 rejection, the combination of reference teachings fails to disclose or suggest limitations of claim 65. Claim 65 is allowable for this additional reason.

Further with respect to the rejection of claim 65, it is stated on page 7 of the Office Action that limitations of claim 65 are a matter of "**design choice.**" The undersigned hereby traverses and seasonably challenges such assertion pursuant to MPEP §2144.03 (8<sup>th</sup> ed.), **and requests the Examiner cite a reference in support of his or her position.** Applicant believes reasonable doubt exists regarding the Examiner's assertion of judicial notice.

The Examiner is reminded that the facts constituting the state of the art are normally subject to the possibility of rationale disagreement among reasonable men and are not amenable to the taking of judicial notice. See *In re Eynde*, 480F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973). The Examiner is also reminded that claims are analyzed in the context of the combination of the various separately stated limitations, and not with

respect to the limitations individually. Pursuant to MPEP §2144.03 (8<sup>th</sup> ed.), Applicant hereby demands evidence with respect to what the Examiner apparently relies upon as being "well-known".

Referring to the anticipation rejection of claim 66, Walton fails to disclose or suggest the communication circuitry comprising radio frequency identification device circuitry configured to communicate microwave wireless signals. Claim 66 is not anticipated by Walton. Further, Lebby also fails to disclose or suggest communication of microwave signals properly combinable with the teachings of Walton. Claim 66 recites patentable subject matter and Applicant requests withdrawal of the 103 rejection.

10 The claims which depend from independent claim 66 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

13 Referring to claim 71, Walton fails to disclose or suggest the claimed providing the substrate having the support surface and encapsulating using the encapsulant as recited in claim 71. The Examiner is requested to identify the specific teachings of Walton relied upon as allegedly disclosing the substrate and encapsulant with respect to reference numbers of Walton. Claim 71 is allowable in a non-final Action.

The claims which depend from independent claim 71 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

Referring to claim 76, the method recites encapsulating at least a portion of the communication circuitry with an encapsulant which contacts at least the encapsulated portion of the communication circuitry. Walton fails to disclose or suggest the encapsulant contacting communication circuitry as claimed. The Office Action at pages 5-6 identifies teachings in col. 6, lines 44-53 regarding the assembly is encapsulated in a plastic rectangular bar. However, the *mere disclosed encapsulation of Walton fails to disclose or suggest any contacting* as claimed. The Office Action appears to attempt to clarify the deficiencies of previous Office Actions by the recitation provided on page 2 of the Office Action by merely stating Walton discloses the encapsulant which contacts the communication circuitry referring to col. 6, lines 44-53 with absolutely no clarification or identification of any teachings in the prior art which disclose or suggest the contacting recited in claim 76. Limitations of claim 76 are not shown nor suggested and claim 76 is allowable over the prior art.

The claims which depend from independent claim 76 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

Claim 79 recites providing radio frequency identification device circuitry configured to communicate wireless signals comprising microwave signals. Walton fails to disclose or suggest provision of circuitry to communicate microwave signals. Claim 79 is allowable.



The claims which depend from independent claim 79 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

Claim 82 recites providing radio frequency identification device circuitry configured to communicate wireless signals comprising microwave signals. Walton fails to disclose or suggest provision of circuitry to communicate microwave signals. Claim 82 is allowable.

The claims which depend from independent claim 82 are in condition for allowance for the reasons discussed above with respect to the independent claim as well as for their own respective features which are neither shown nor suggested by the cited art.

10 Claim 99 recites communication circuitry configured to implement backscatter communications. The Examiner relies upon MacLellan for backscatter communications as set forth on page 12 of the Action. The combination of MacLellan and Walton is inappropriate.

Walton is directed towards magnetically coupled systems while MacLellan is directed towards a radio frequency system as set forth in cols. 4-5. The teachings of MacLellan regarding backscatter communications are inapplicable to the magnetic coupled system of Walton. The 103 rejection of claim 99 is inappropriate for at least this reason.

The 103 rejection of claim 100 based upon Walton and MacLellan is improper. Walton is directed towards a magnetic coupled system and the teachings of MacLellan regarding backscattering are inapplicable thereto. The teachings of MacLellan may not be properly combined in support of the 103 rejection and claim 100 is allowable.

Applicant has again identified numerous limitations not shown nor suggested by the prior art. In the event that a rejection of the claims is maintained with respect to the prior art, or a new rejection made, Applicants respectfully request identification ***in a non-final action*** of elements which allegedly correspond to limitations of the claims in accordance with 37 C.F.R. §1.104(c)(2). In particular, 37 C.F.R. §1.104(c)(2) provides that *the pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified*. Further, 37 C.F.R. §1.104(c)(2) states that the Examiner must cite the best references at their command. When a reference is complex or shows or describes inventions other than that claimed by Applicants, the particular teachings relied upon must be designated as nearly as practicable. The pertinence of each reference if not apparent must be clearly explained for each rejected claim specified. Applicants respectfully request clarification of the rejections with respect to specific references and specific references teachings therein pursuant to 37 C.F.R. §1.104(c)(2) in a ***non-final Action*** if any claims are not found to be allowable.

Once again, Applicant submits a copy of a previously filed IDS and form PTO 1449. Applicant requests initialization of the reference thereon and return of the initialed form to Applicant indicating full consideration of the references by the Examiner in compliance with **obligations set forth in MPEP §609 (8<sup>th</sup> ed.)**.

The new claims are supported at least by the teachings in Figs. 1-4 and the related specification teachings of the application.

S/N: 09/524,804  
Amdt. Dated 11/17/2003  
Office Action dated 7/16/2003

The Examiner is requested to phone the undersigned if the Examiner believes such would facilitate prosecution of the present application. The undersigned is available for telephone consultation at any time during normal business hours (Pacific Time Zone).

Respectfully submitted,

Dated: \_\_\_\_\_

11/17/03

By: \_\_\_\_\_



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